

CAPITAL PROJECTS ADVISORY REVIEW BOARD
General Administration Building
210 11th Street SE, Conference Room 332
Olympia, Washington
February 9, 2006
9:00 AM

Final Amended Minutes

<u>MEMBERS PRESENT</u>	<u>REPRESENTING</u>	<u>MEMBERS ABSENT</u>	<u>REPRESENTING</u>
Gerald "Butch" Reifert	Design Industry	Appointment Pending	House of Representatives (R)
Larry Stevens for Rocky Sharp	Specialty Contractor	Sen. Dave Schimdt	Senate (R)
Ed Kommers	Specialty Contractor	Rep. Kathy Haigh (Vice Chair)	House of Representatives (D)
Carolyn Crowson	OMWBE	David D. Johnson	Construction Trades Labor
John Lynch (Chair)	General Administration	Sen. Phil Rockefeller	Senate (D)
Rodney Eng	Cities/Counties/Ports	Olivia Yang	Higher Education
Michael Mequet	Cities/Counties/Ports	Gary Ballew	Cities/Counties/Ports
Wendy Keller	Public Hospital Project Rvw Bd		
Dan Vaught	School District Project Rvw Bd		
Larry Byers	Insurance/Surety Industry		
Daniel Absher	General Contractor		

STAFF & GUESTS

Nancy Deakins, GA	Dave Janson, WDOC
Searetha Kelly, GA	Dick Lutz, Centennial Construction
Valerie Gow, Puget Sound Meeting Services	Tom Peterson, Hoffman Construction
Nora Huey, King County	Darlene Septelka, King County
Dick Goldsmith, AWPFD	
Paul Berry, CMAA	

Welcome & Introductions – Chair's Comments

Chair John Lynch called the Capital Projects Advisory Review Board (CPARB) meeting to order at 9:05 a.m.

A meeting quorum was attained. Chair Lynch reviewed the meeting agenda.

Chair Lynch reported he attended several subcommittee meetings and is pleased with the progress to date.

Approve Agenda

Daniel Absher moved, seconded by Larry Byers, to approve the agenda as presented. Motion carried.

Approval of January 12, 2006 Minutes

Larry Byers moved, seconded by Carolyn Crowson, to approve the minutes of January 12, 2006 as presented. Motion carried unanimously.

Wendy Keller recommended including public comments later in the meeting. Chair Lynch offered to also provide an opportunity for public comments after each agenda item.

Public Comments

There were no public comments.

Rodney Eng arrived at the meeting at 9:08 a.m.

Reports from Subcommittees

Data Collection Subcommittee – Darlene Septelka

Ms. Septelka reported the subcommittee is moving forward. A representative of Boeing attended the meeting and shared his experience with benchmarking both while he was in the Navy and at Boeing. Boeing tends to undergo an informal and regional process. The Navy has a more formal benchmarking system. He shared some possible benchmarks based on his Navy service. He also reviewed the subcommittee's list of benchmarks and indicated the subcommittee was headed in the right direction. He commented about benchmarking with existing studies, such as the CII Study, a study that she and her colleague benchmarked during the JLARC Study. The Boeing representative was not aware of any other studies other than the CII Study.

Ms. Septelka said at the next meeting, she will present the list of benchmarks. The list is also under review to determine the data elements to ascertain the data required to enable benchmarking. The next step is to take the elements and provide all data that are needed for collection. The subcommittee will then review all the data elements along with the benchmarks. In April, the subcommittee anticipates providing the detailed data elements to be collected to measure the benchmarks.

Chair Lynch referred to the subcommittee's goal to keep the list as concise as possible. Ms. Septelka agreed but noted there are a variety of issues. For example, when bid packages were released for GC/CM, no data were collected on how many of the contractors were solicited to ascertain how many bidders were small or minority businesses and what efforts were put forth to recruit small or minority businesses. Carolyn Crowson had some concerns and was interested in ascertaining how they could be benchmarked.

Carolyn Crowson said to address concerns from community groups and to avoid lawsuits and bid protests from either the minority or non-minority community, it is important to track whether the information is reported centrally and to document the outreach undertaken and what kinds of businesses were included and their classification. She said she met recently with representatives from the Department of Transportation, who lost a major federal appeal in Vancouver because diversity planning for some contracts was not appropriately completed, goals weren't properly established, and availability reviews weren't completed. Nationwide, Washington State is recognized for losing the appeal, which has impacted diversity programs across the country. A national consultant met with personnel administering federal programs across the state, which included WSDOT, Sound Transit, and representatives from airports to discuss what is needed to address and deal with the loss of the appeal. What needs to be recorded is identification of companies that receive bids for contracting and subcontracting.

Ms. Septelka said the subcommittee is addressing the concern, which could either be a simple or more detailed process.

Chair Lynch said the majority of the data are likely objective information, such as dollars or where the answers are a yes or no. Other data could be more subjective where written comments are required. The subjective

data are challenging when it pertains to entering the information in a database because it's difficult to match data elements. Ms. Septelka said the previous study consisted of the yes or no answers. However, the study missed many elements. Consequently, the subcommittee will likely take some elements of the first study and second study and combine them with the results not as detailed to the degree of the first study. The goal is to keep the process as simplified as possible.

Chair Lynch noted the goal is to collect the data and establish the system so that by the end of 2006, at the latest, there will be information that can be used to support legislation for the 2007 session. Ms. Septelka said at this point, the subcommittee is determining the information that needs to be collected. There is the other issue of whether there is funding available to collect the data or whether the Department of General Administration will collect the data. That is the question that needs to be addressed outside the subcommittee. The decision to collect or not collect data needs to be determined by the Board. Ms. Crowson added the schools have volunteered once the template is completed to collect the data. Mr. Vaught said the schools volunteered to collect only school data.

Chair Lynch said one possibility could be utilizing GA's information system to develop an internet-based survey, where data collection could be accomplished over the internet.

Ms. Crowson inquired about the status for funding of the data collection system. Chair Lynch noted the absence of Representative Haigh to obtain a follow-up report on the funding request. A letter from the CPARB was sent to legislative members of the Board requesting funds in 2007. There is \$50,000 available for the current biennium for data collection. Additionally, staff is looking at a GA budget request in 2007-2009 to initiate the data system

Ms. Septelka reported at the March meeting, she will present the elements that will be benchmarked but not the detailed items that need to be collected to provide the benchmarks. For the detailed data, there likely will be some issues that the subcommittee will need to discuss. At the May meeting, the subcommittee report will include the entire system to receive comments from the Board. Chair Lynch asked Ms. Septelka to bring drafts of the work to date to keep the Board informed prior to the presentation in May.

Reauthorization Subcommittee – Rodney Eng

Mr. Eng reported the subcommittee has established three task force groups:

- Owner and Project Eligibility
- MACC
- Contractor

The subcommittee is considering 20 issues as barriers or potential barriers to reauthorization of the RCW. Chair Lynch referred to the 20 issues as provided to the Board earlier in the meeting.

Mr. Eng noted item 12 is the only item that can be considered complete in terms of a recommendation from the subcommittee. The subcommittee concurred the item should be pursued but members have not determined how it should be implemented, such as a statutory amendment, best practices manual, or recommendation.

There was consensus within the first task force of a general concept that there will be a need for some form of a central board/committee to determine owner and project eligibility. The details of the board/committee are still open for discussion, but there was general agreement that there should be a board/committee.

There were issues surrounding the MACC discussed by group 2. The discussion centered on the concept of when the MSCC should be set. The general concern is that the amount of risk GC/CMs are being asked to take

for the reward of the contract is disproportionate. Setting the MACC at 70% of total design is placing too much risk too early on the GC/CMs in terms of keeping the project within the MACC. The market is volatile and fluctuates. Several proposals were considered. The first is requiring that the MACC not be set for 90% of the final construction drawings. Mr. Eng explained the historical perspective for setting the MACC early. During the subcommittee meeting, an option was discussed about whether setting the MACC at 90% is too late for some projects and whether the owner should have some flexibility. Task force members recognized the problem and tried to reach a consensus that will address the real concern especially in today's market of price fluctuations even in the short period of time between setting the MACC and bidding.

Daniel Absher said the second option discussed included capping the amount of risk contractors have and try to help owners by not having the MACC or mandate a budget MACC that is nonbinding early in the process with GC/CM assuming some risk. Mr. Eng said the option is a method used by Federal Reserve banks for construction projects.

Mr. Eng said overall, there was no consensus by the task force or the subcommittee but there is movement toward solving the issue.

Ms. Septelka offered to provide some analysis on setting the MACC to the subcommittee.

Mr. Eng reported the second option for the MACC was not discussed by the subcommittee and therefore it is unknown whether it was accepted or rejected. However, there were some comments that the option was fairly complex.

The third task force group (Contractor) reached general consensus to one aspect of the dispute resolution process. Ed Kommers provided an overview to the task force of the changes and problems that subcontractors experience as well as proposed changes to the statute. The subcommittee and the task force believe draft language enables a more comprehensive discussion because it demonstrates what is required.

The claims process also appeared to be of a detriment to the subcontractor because the owner does not necessarily have to respond at any particular time. There is no assurance of when the issue will be considered or pursued through the claims process. Mr. Eng said he believed consensus was attained for a solution of establishing an owner deadline to respond, and if the owner failed to respond, the appeal would be considered as "denied" enabling the contractor to move the process forward. Chair Lynch said there appeared to be some agreement. He recommended documenting and formalizing the option before the next meeting. Mr. Eng said the task force discussed other issues and one issue that attained a general consensus concerned the option that owners should undertake a construction ability review for all GC/CM projects. Mr. Eng said Mr. Kommers drafted some language to modify RCW 39.10.070. Based on the feedback, Mr. Kommers committed to redrafting some language to tighten and modify the provisions.

Nancy Deakins referred to the Board's issue tracking form and asked if the issues included on the form are the issues the task force should be working on or whether it is allowable for the task force to work on other issues. Mr. Kommers advised that the task force is not extending beyond the boundaries of the items included on the tracking form. Mr. Eng suggested unless the Board objects to the course followed by the task force and subcommittee, the work should proceed in its current form. Many of the issues are interrelated and many of them overlap task forces and subcommittees. Members need the flexibility to address the issues. Mr. Absher agreed the subcommittee should have some latitude but cautioned that the group might get entangled in the underlying issues while ignoring the list of items that need a recommendation. Chair Lynch added if items can be checked off, it provides some confidence to the Board that progress is occurring.

Discussion ensued about not sidetracking the goal of attaining a recommendation regarding reauthorization. Ms. Crowson expressed interest in reviewing any draft legislation as it develops to ensure barriers have not been inadvertently created for small businesses.

Discussion ensued about posting minutes and notes from the subcommittees on the website. Chair Lynch suggested that any document that is considered a “handout” that is provided during a subcommittee or task force meeting should be copied electronically to the CPARB.

Members discussed the legislative deadline and the importance of being mindful of completing the tasks as identified by each subcommittee.

Expansion Subcommittee – Rodney Eng

Mr. Eng said his overall impression is that the subcommittee is working well to address issues. Currently, the subcommittee is working on the attributes of an appropriate GC/CM project. The subcommittee is addressing issues of expansion. Some of the concerns and issues raised evolve around the dollar limitation of projects and whether GC/CM must be over \$10 million and whether the cost of the project is an appropriate threshold to qualify for GC/CM.

There was general consensus that \$10 million is not necessarily the right figure but that there are concerns that the complete elimination of a cost threshold might not be acceptable. Subcommittee members did not attain consensus on what the figure should be. At a minimum, the threshold could be lower. There was also a focused effort on determining the attributes that are characteristic of a project using the GC/CM method. A tighter set of criteria might lessen to some extent, a concern by some, that smaller projects might inappropriately use the GC/CM method. More focus was on a central board to select or approve GC/GM projects.

Subcommittee members worked to develop a list of attributes of a good GC/CM project and reviewed projects meeting the attributes in more detail.

Mr. Eng reported the subcommittee will meet again to develop a set of refined criteria for GC/CM projects. He noted he volunteered to take the information and draft statutory language.

Chair Lynch indicated the subcommittee should also be considering the other alternative public works methods – Design Build, Job Order Contracting, and new methods (if determined). Mr. Eng said the subcommittee’s schedule shows job order contracting and design build to be reviewed in June and July. Subcommittee members agreed to devote time addressing GC/CM and defer review of new methods until later to meet the legislative deadline.

Mr. Absher asked whether the support of an authorizing board renders expansion efforts somewhat moot. Mr. Eng said the subcommittee believes an authorizing board would be complementary. The task force that generated the idea of a central board discussed a range of ideas about the composition of the board or committee to include two boards/committees - one in eastern and one in western Washington to address timeliness concerns. Mr. Eng said the subcommittee will continue to focus on what criteria should be applied to determine a qualified owner.

Mr. Vaught said when the school districts were requesting additional authorization, it was an underlying issue. He indicated he supports the idea of a central board/committee and suggested the collection of data could be one element that could be collected by a centralized board/committee. Mr. Eng noted it might be inappropriate for a voluntary central board/committee to assume the role of a central clearinghouse. However, from a data collection perspective, a centralized board/committee could be a designated location to collect information.

Another positive aspect is that it could also be a central location for owners and contractors to go to if there are concerns.

Chair Lynch recessed the meeting at 10:15 a.m. to 10:35 a.m.

Continue Subcommittee Reports and Discussion

Ms. Septelka asked whether there has been discussion about a “best practices guide.” Many of the issues will not be addressed with legislation. She asked whether there has been consideration about the issues that should be in legislation and what issues should be in a best practices guide for owners. Additionally, whether the guide should address circumstances when an owner is considering an alternative public project and issues that should be considered so that prior to approaching the central board/committee, the owner knows what issues should be evaluated and what the central board/committee will look at. Chair Lynch said the idea has been addressed during subcommittee discussions. On the list of issues, there could be an additional column added for a recommendation that speaks to the implementation of a guideline rather than legislation.

Mr. Eng reported there are a number of considerations the Board should be aware of. One consideration is that there could be a sense that a “best practices guide” is not a strong message to the community. Another consideration is similar to an existing statute, such as the Uniform Commercial Code (UCC). The statute includes an official commentary section providing a substantial amount of detail that expands on the requirements of the statute. There is a double layer of information to help guide interpretation of what is meant by the statutory language. It could be one tool as a way to resolve the issues and meet the needs of how to proceed.

Ms. Deakins said as the subcommittees continue to work toward preparing for the next legislation session, the subcommittees should consider what kinds of things legislators will want to know and how to best present the information. The subcommittee’s discussions will draw out issues that will need to be shared with legislators and perhaps the task force groups or subcommittees could formulate some statements.

CPARB Strategies – Are we on track?

Chair Lynch said it appears the subcommittees are on track, are addressing the issues, and it appears the effort is moving toward completion of the tasks as outlined in the Board’s original strategic plan. The strategic plan was forwarded to the legislative committees as well as with a report on the status of CPARB’s work to date. Another letter was forwarded to the legislative members of the CPARB concerning the amount of administrative funds for supporting the CPARB in 2007. No information has been received from Representative Haigh concerning the request. Chair Lynch indicated he will follow up with Representative Haigh.

Mr. Kommers asked how members of the CPARB can assist in ensuring the funds are allocated. Chair Lynch said he will electronically provide additional information to members on how they can assist in supporting the funding request.

Ms. Crowson noted Representative Santos previously criticized the lack of data collection for minority and women-owned businesses. She noted she can provide information about the data collection effort and request support.

Mr. Lynch responded to questions about inclusion of the funding in GA’s budget request. The funding request was subsequently not included in the Governor’s budget.

Set Next Meeting Agenda

Chair Lynch commented on the current legislative session and conflicts with next month's meeting date. Ms. Keller suggested not changing the meeting date as it is already scheduled. Mr. Absher suggested checking with Representative Haigh about the meeting date in order to accommodate the attendance of legislative members to the next CPARB meeting.

Members agreed to retain the March 9 meeting date.

Mr. Eng suggested including a short report on accomplishments of the legislative session on the March 9 meeting agenda by Representative Haigh or Senator Rockefeller.

Adjournment

Chair Lynch adjourned the meeting at 10:51 a.m.

John Lynch, Chair, CPARB

Prepared by: Valerie Gow, Recording Secretary
Puget Sound Meeting Services